

June 29, 2004

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

RE: The Berkshire Gas Company, D.T.E. 04-52

Dear Secretary Cottrell:

On May 14, 2004, the Berkshire Gas Company (“Company” or “Berkshire”) filed its first annual price cap rate adjustment filing pursuant to the performance based rate making plan (“PBR”) approved by the Department of Telecommunications and Energy (“Department”) in the Company’s last rate case in D.T.E. 01-56. On June 9, 2004, the Department issued a Notice of Filing and Request for Comments (“Notice”) for June 30, 2004. According to the Notice, the Company seeks approval of a normalized revenue increase of \$252,197, or a base revenue increase of .92 percent. The Company seeks to recover, as an exogenous cost under the PBR, the costs associated with post-9/11 security upgrades, and a new phone system to meet service quality requirements. The Attorney General submits this letter as his comments.

The Company’s proposal raises several issues that require further investigation, including, but not limited to, the following topics. First, the Company has exceeded the Department’s rate design flexibility by requesting an interclass adjustment.¹ The Department precedent only allows intraclass adjustments. *Berkshire Gas Company*, D.T.E. 01-56, p. 28 (2001); *Boston Gas Company*, D.P.U. 96-50, pp. 333-334 (Phase I) (1996). Second, Berkshire has not discussed whether customers are entitled to an exogenous factor rate reduction to account for bonus depreciation under the Internal Revenue Code (“IRC”), § 168(k) - Special Allowance for Certain Property Acquired After September 10, 2001 and Before September 11, 2004;

¹ The Company’s interclass adjustment imposes all of the exogenous cost recovery on a limited number of customers without any justification. Furthermore, the Company’s normalized revenue calculation requires further investigation to determine its impact on the proposed interclass adjustment.

Berkshire Gas Company, D.T.E. 01-56, pp. 25-26; *see* MECo - Exh. 1, pp. 54-58 (Testimony Michael Laflamme) *Massachusetts Electric Company*, D.T.E. 03-124 (pending approval). Third, since this filing represents the Company's first adjustment under a new PBR formula, the Department should subject it to heightened scrutiny to ensure compliance with the requirements in D.T.E. 01-56.

The Department should open discovery, conduct an evidentiary hearing, and allow briefing before approving the Company's filing.

Sincerely,

Alexander J. Cochis
Assistant Attorney General

cc: Service list